

Planning & Zoning Commission Meeting  
Minutes of January 7, 2009  
161 S. Charlotte Street - Room A-109

**Present:** Chairman Steven Sizemore; Cindy Weeks, Vice-Chair; Thomas Byers, Nathaniel Cannady, Darryl Hart, Jerome Jones (left meeting at 5:51 p.m.) and Mark Sexton

**Absent:** None

**Work Session - 4:30 p.m.**

The Commission and staff met to (1) hear an update on the Downtown Master Plan from Ms. Sasha Vrtunski, and determined that they would have a full discussion of the Plan at the mid-month January 22 meeting; (2) determine that the upcoming March retreat would be oriented to the Downtown area and the Downtown Master Plan; (3) discuss a proposal of Ms. Cindy Weeks that the Commission support a resolution stating their support for continued funding of the City's Housing Trust Fund, and determined to have a formal discussion of that resolution during the meeting; and (4) discuss with the staff the proposals for changes to the Unified Development Ordinance to ease certain development requirements due to the current downturn in economic conditions.

**Regular Meeting - 5:00 p.m.**

Chairman Sizemore called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

**Administrative**

Chairman Sizemore asked that the December 3, 2008, minutes be amended to reflect that his non-participation in the vote on the design variance standards for the Sulphur Springs Condominiums project was due to the Commission acting in a quasi-judicial capacity, similar to the Board of Adjustment which consists of five members.

Mr. Byers moved to approve the minutes of the December, 3, 2008, meeting, as amended. This motion was seconded by Mr. Cannady and carried unanimously by a 7-0 vote.

Chairman Sizemore said that the draft Downtown Master Plan will be presented to the public on Thursday, January 15, 2009, at the Asheville Civic Center and urged the public to attend and comment on the plan.

**Agenda Items**

- (1) Consideration of variances to the design and operational standards as required in the Urban Village District, per Section 7-8-23 (f) (11) of the Unified Development Ordinance, for a 703 square foot bank drive-through facility for the Level II project identified as RBC Centura Drive Through at Biltmore Park Town Square. The property owner is One Town Square, LLC, and the contact is Jeff Maness. The property is identified on the Buncombe County tax maps and records as PIN 9645.03-21-1412.**

City Attorney Oast said that State law for boards of adjustment specifies a board consisting of five or more members, plus alternates. The law also provides for a 4/5 vote to approve any variance, so a five member board makes the math easier. Like most North Carolina cities, our board consists of five members, plus alternates. For all those reasons, City Attorney Oast suggested that the Planning & Zoning Commission, when acting as the Board of

Adjustment, have 5 regular members and 2 alternates, and after consulting with Chairman Sizemore, suggested that one alternate be a County appointee, and the other be from the City. City Attorney Oast said that, in his experience, alternates served almost as frequently as regular members, due to absences, conflicts, etc., and that the Planning & Zoning Commission did not consider enough variances that this should be an issue. He added that alternates could remain at the table, but should not engage in any discussion or consideration of the request, and could not vote. Mr. Jones (City representative) and Mr. Cannady (County representative) volunteered to serve in the alternate capacity for this vote and not participate.

City Attorney Oast said that he had made copies of the Board of Adjustment rules for the Commission, and would distribute them at the January 22, 2009, mid-month meeting.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Because of requested variances to the design standards, City Clerk Magdalen Burleson sworn in anyone who anticipated speaking.

Urban Planner Jessica Bernstein oriented the Commission to the site location and said that the petitioner is requesting variances from Section 7-8-23(f)(11) (b) and (c), which address the location of pedestrian entrances on each side of the building and the percentage of windows, doors and other openings on street facing façades.

She explained that the project consists of a single parcel, 2.14 acres in size, located at the corner of Dearborn Street and Schenck Crescent in the Biltmore Park Town Square urban village. The site is an existing improved parking lot with mature landscaping, accessed from Schenck Crescent.

The proposal includes the addition of a 703-square foot, single-story RBC Centura Bank drive-through facility. This will require the loss of approximately 37 parking spaces (resulting in 89 spaces remaining) and slight modifications to the lot to accommodate vehicular flow as well as upgrades to landscaping to meet the current ordinance.

The following variances are needed to accommodate the proposed building design:

- ? *Entrances* – The code requires all buildings to include well-defined entrances facing the street at regular intervals. Due to the nature of this structure as a bank drive-through facility, there is only one pedestrian entrance proposed (south elevation).
- ? *Windows, Doors and Other Openings* – The first floor of all new structures shall be designed in a way that a minimum of 45% of the length of the first floor street frontage incorporates windows, doors and other openings to complement pedestrian-scale activity. The south, east and west façades are deficient and are proposed in this manner due to the security issues inherent to a bank drive-through facility.

Although all variance findings are not expressly met, staff recommends approval of the request. It is highly unlikely that this 703-square foot single-story structure could be re-used for any purpose other than a bank drive-through facility and future potential bank occupants would likely have similar security concerns.

Staff recommends approval of the design and operational standards.

Chairman Sizemore opened the public hearing at 5:25 p.m.

Mr. Jeff Maness, architect representing the developer, said that he was present to answer questions.

Chairman Sizemore closed the public hearing at 5:26 p.m.

Based on the above findings and the analysis provided by staff, Ms. Weeks moved to recommend approval of the variances from Section 7-8-23(f)(11) (b) and (c), which address the location of pedestrian entrances on each side of the building and the percentage of windows, doors and other openings on street facing façades for a 703 square foot bank drive-through facility for the Level II project identified as RBC Centura Drive Through at Biltmore Park Town Square. This motion was seconded by Mr. Sexton and carried unanimously by a 5-0 vote (with Mr. Jones and Mr. Cannady not voting, due to the Commission acting in a quasi-judicial capacity, similar to the Board of Adjustment which consists of five members.).

**(2) Rezoning request for properties located around 152 Bleachery Boulevard from Urban Village District and River District to Commercial Industrial District. The owners are Six Oaks, LLC, Harley D., LLC, Bob J., LLC, and Steve H., LLC, and the contact is Chris Day of Civil Design Concepts. The properties are identified on the Buncombe County tax maps and records as PINs 9658.19-52-4185 and 8314.**

Urban Planner Blake Esselstyn oriented the Commission to the site location and said that this rezoning request is the consequence of a recent conditional zoning for the Altamont at Riverbend Village project, which rezoned more than 15 acres from Urban Village to RM16/Conditional Zoning. As a result, the remaining neighboring area of land zoned Urban Village totals less than four acres, and Section 7-8-23 of the Unified Development Ordinance (UDO) states that the minimum area for an Urban Village District shall be five acres. Six Oaks, LLC, the owner of the Altamont site as well as the subject property on the east side of Bleachery Boulevard, was informed during their application process that this rezoning request would be required to address the creation of a non-conforming situation.

Commercial Industrial (CI) was proposed as an alternative by staff due in part to the area of land southwest of the subject area already zoned CI. Staff considered a rezoning of the CI area and roadway to Urban Village to assemble an area adding up to more than five acres to achieve conformity, but the slope of the land on the west side of the road (around 25%), the location of the road dividing the area, and the presence of a detention pond on the east side indicate too little usable land for a viable urban village design.

The three LLCs that own the 1.3-acre parcel (part of which is zoned Urban Village) on the west side of Bleachery Boulevard are also a party to the rezoning request, and have indicated their support of staff's execution of the proposed rezoning.

The stated purpose of the Commercial Industrial district is "to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale, warehousing, services, retail sales, offices, and residential uses. The district is established where environmental conditions and urban infrastructure are adequate to support commercial and industrial development."

The Urban Village (UV) District was "established to create mixed use development that is economically vital, pedestrian-oriented and contributes to the place-making character of the built environment. The Urban Village District offers the unique opportunity to provide quality and long lasting retail, office and residential uses in an organized layout that encourages the full range of

access by patrons and users, and offers innovative high quality design of structures, public amenities and pedestrian facilities.”

The recent conditional zoning decision effectively removed the possibility of an urban village development in this area. While the remaining area zoned UV does have development potential, it does not possess the physical characteristics needed for a successful urban village. The Commercial Industrial classification would allow for a varied mix of uses, consistent with the neighboring development on the roadway. And although the industrial uses permitted in CI would be unlikely choices on this corridor, the proposed zoning district could invite types of employment that are not available as permitted uses under the current zoning.

As of this writing, staff has received no communications from the public regarding this rezoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- ? Rezoning would achieve compliance with the UDO.
- ? Proposed Commercial Industrial zoning is compatible with the surrounding area.

Con: None noted.

Staff feels the proposed rezoning is appropriate for the situation and recommends approval.

Chairman Sizemore opened the public hearing at 5:30 p.m. and because there was no public comment, he closed the public hearing at 5:30 p.m.

Based on the above findings and the analysis provided in the staff report, Mr. Jones moved to recommend approval of the rezoning request of properties located around 152 Bleachery Boulevard from Urban Village District and River District to Commercial Industrial District. This motion was seconded by Ms. Weeks and carried unanimously by a 7-0 vote.

**(3) Initial zoning of the recently annexed property located at 131 Old Charlotte Highway to Community Business I District. The property is identified as PIN 9667.16-73-7727.**

Urban Planner Julia Cogburn oriented the Commission to the site location and said that the City of Asheville recently completed the voluntary annexation (effective December 31, 2008) of a .85 acre tract located at 131 Old Charlotte Highway in eastern Buncombe County (approximately 1.9 miles from the current City limits). A single-family home is located on the property which has been purchased by the Asheville ABC Board for the development of a new ABC store. The property is at the edge of the Olde Eastwood Village community.

The property, along with surrounding properties in the area, is zoned NS (Neighborhood Service) District by Buncombe County. Staff proposes a similar City zoning classification, CBI (Community Business I) District for this parcel.

Pro:

- ? Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's comprehensive plan.

Con:

- ? None noted.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Ms. Cogburn said that she spoke with an adjoining property owner regarding buffering. Although she was not sure buffering would be required, she suggested he contact the ABC Board, who she felt sure would be willing to discuss that with the property owner.

Chairman Sizemore opened the public hearing at 5:33 p.m. and because there was no public comment, he closed the public hearing at 5:33 p.m.

At Mr. Byers suggestion, it was the consensus of the Committee that when a motion is made by Commission members to approve an item, that it is understood that the motion is based on the findings and the analysis provided in the staff report, unless otherwise noted.

Based on the above findings and the analysis provided in the staff report, Mr. Cannady moved to recommend approval of the initial zoning of 131 Old Charlotte Highway to Community Business I District. This motion was seconded by Mr. Jones and carried unanimously by a 7-0 vote.

**(4) Ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville relative to making clarifications and corrections in Chapter 7**

Urban Planner Julia Cogburn said that this is the consideration of many amendments to Chapter 7 of the Code of Ordinances of the City of Asheville (UDO) for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance.

Ms. Cogburn said that working with the UDO on a daily basis, the Planning and Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff compiles these issues as they are noted and regularly proposes amendments to correct these situations and to make the UDO a clearer document for staff and public use. The set of proposed amendments address fifteen of those discovered issues. She described them as follows:

- a. This amendment adds the language “and/or where the requirements are modified in accordance with Section 7-7-8(c)(6)” to clarify that modifications may be granted to standards and requirements of the general zoning districts in conditional zoning matters.
- b. The addition of a new number (7) to the conditional zoning process simply puts in writing the practice of taking detailed plans back to TRC before a permit is issued. [Suggestion after review that this be number (8) rather than (7)].
- c. This amendment adds Urban Place and Light Industrial to the zoning district list and places these along with URD, NCD, and Urban Village in a more appropriate place on the listing of “Highest” to “Lowest” use districts.
- d. & e. These amendments change two subsections so that the prohibition of “drive through facilities” is handled in the same way in all districts where there is such a prohibition (Neighborhood Commercial and CBI). This places the term “drive through facilities” under the prohibited uses listing rather than in the design and operations standards where it often gets lost.
- f. This amendment is a correction of a reference (from “chapter” to “article”).
- g. This amendment codifies a long standing interpretation (1/07) that handrails on steps, etc. are not include when figuring the height of such steps, etc. This is important as

steps, terraces, patios, and uncovered decks can encroach up to ten feet in a required front setback so long as they do not have a height greater than 30 inches.

- h. This amendment corrects a citation reference.
- i. This amendment also corrects a citation reference.
- j. This amendment codifies our recently adopted practice of requiring financial surety for a private drive in an alternative access ("four lot") subdivision if the developer wants to record the plat prior to completing the drive. Staff has dealt with a few instances where drives were not completed and lots were sold with the developer walking away from this responsibility.
- k. This amendment simply calls the reader's attention to the section that lists the districts where tree save areas are not required.
- l. This amendment is a renumbering to bring this section in line with the numbering system found throughout the UDO.
- m. This amendment drops the words "and may be covered under one permit" from the last sentence of the section enumerating requirements for temporary storage containers in nonresidential districts. This phrase was dropped due to the fact that in another part of the same article, it is stated that permits are not required for temporary storage containers in nonresidential districts.
- n. This amendment corrects an incorrect district listing (should be Urban Village and not Neighborhood Commercial District).
- o. This amendment takes "group homes" out of the low impact listings. "Group homes" were listed twice; in both the low and medium impact listings.

This ordinance supports the Council goal of completing UDO amendments to improve clarity and address community goals.

Pros:

- ? Codifies past staff interpretations and practices on issues.
- ? Corrects incomplete or improper listings and citations.
- ? Adds or amends language for greater clarity.

Con:

- ? None Noted.

The Planning and Development Department staff recommends approval of these wording amendments.

There was a brief discussion initiated by Mr. Byers about what kind of consideration has been given in the past regarding drive through facilities in the Community Business I District.

Regarding the amendment to (i), City Attorney Oast asked that Section 7-7-8 (d), Conditional Zoning, General Requirements, be amended by adding a new number 6.1 (*not* 7) to read as follows: Prior to the issuance of any permits, the applicant must submit detailed plans to the technical review committee for final review.

Chairman Sizemore opened the public hearing at 5:51 p.m. and due to no public comment, he closed the public hearing at 5:51 p.m.

At 5:51 p.m., Mr. Jones left the meeting due to a prior commitment.

Based on the above findings and the analysis provided in the staff report, Mr. Weeks moved to recommend approval of the wording amendment, with the amendment noted by City Attorney Oast. This motion was seconded by Mr. Cannady and carried unanimously by a 6-0 vote.

**(5) Ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville relative to digital billboards**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of amendments to Chapter 7 of the Unified Development Ordinance (UDO) to amend standards found in Article XIII (signs) restricting and regulating digital billboards.

Ms. Tuch said that in April 2008, the Planning & Zoning Commission reviewed and approved standards that allowed and regulated digital billboards along certain corridors within the City of Asheville corporate limits. The Asheville City Council subsequently reviewed and adopted the same standards. Since adoption, six separate digital billboards have been permitted along major thoroughfares including: Smokey Park Hwy.; Hendersonville Rd.; Long Shoals Rd.; Tunnel Rd; and Sweeten Creek Rd.

Asheville appears to be somewhat ahead of other municipalities in adopting standards to permit and regulate digital billboards. Those standards that were adopted, along with the existing restrictions to off-premise billboards, generally appear to appropriately address safety and land use concerns. Any new billboards must meet all applicable standards including those that accommodate the removal/relocation/ reconstruction of existing non-conforming off-premise billboards. Commonly referred to as the "cap and replace" ordinance, these standards "cap" the total number of billboards in the city based on a former survey but allows the billboards to be relocated within certain road corridors. In some cases, the relocation of a billboard will result in a net reduction of structures if signs are consolidated and relocated. The digital billboard ordinance requires a conversion of three square feet of traditional sign face for every one square foot of digital sign face, resulting in a reduction of total square footage. As with traditional billboards, digital billboards can only be located within the permissible road corridors; those corridors include:

1. Patton Ave. – from the French Broad River to the outer limit of the extraterritorial jurisdiction area (ETJ) in Enka
2. Merrimon Ave. – from Chestnut St. north to Woodfin,
3. Sweeten Creek Rd. – from Fairview Rd. to the outer limit of the ETJ,
4. Hendersonville Rd. – from I-40 interchange to the outer limit of the ETJ,
5. Tunnel Rd. – from the tunnel to the outer limit of the ETJ past Oteen,
6. Brevard Rd. – from I-240 Interchange to the outer limit of the ETJ,
7. Airport Rd. – Hendersonville Rd. to the boundary between Buncombe County and Henderson County, and
8. Long Shoals Rd. – from Hendersonville Rd. to the outer limit of the ETJ.

The characteristics of the eight road corridors vary to some degree but are all generally heavily travelled roads supporting an automobile oriented pattern of development. All eight roads are NCDOT managed roads with varying rights-of-way. In most cases, the right of way widths are well over 75 feet.

Recent applications have helped staff identify an unintended omission in the standards that regulate billboards where, presently, no setback is required from either the right-of-way or travel lane of the road. This is particularly concerning in respect to the digital billboards where the brightness levels and changing images have the potential to become hazards to motorists if placed too closely to the travel lanes. This amendment will attempt to correct this by requiring a

minimum setback from the right-of-way to ensure that the signs will remain a reasonable distance from the roadways to minimize any potential hazards and/or nuisances. Due to the varying right-of-way widths, staff is proposing a setback of 10-feet for rights-of-way that are 75-feet or greater in width while proposing a setback of 20-feet for those less than 75-feet in width.

Additionally, due to concerns over sounds and other potential nuisances or hazards, staff is also proposing a separation of 50-feet from any residential structure to ensure a reasonable quality of life for residents, particularly for those who may have limited choices.

City Council adopted the four goals: *sustainable, affordable, green* and *safe*. This report's recommendation most appropriately supports the goal of *safety* by ensuring that standards are in place that help to control or mitigate potentials hazards or nuisances to motorists and residents.

Pros:

- ✍ Protects the general public from potential hazards and/or nuisances.
- ✍ Maintains opportunity outdoor advertising.

Con:

- ✍ Reduces the number of potential locations for new digital billboards.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Staff recommends approval of the amendment to the standards regulating digital billboards as presented.

Upon inquiry of Chairman Sizemore, Ms. Tuch said adoption of this amendment will make one billboard nonconforming – the one on Hendersonville Road just north of the Airport.

In response to Chairman Sizemore, Ms. Tuch said that she has heard reports of humming or buzzing sounds.

Ms. Tuch responded to Mr. Cannady's inquiry regarding the amount of minimum setback from the edge of the rights-of-way.

Chairman Sizemore opened the public hearing at 6:02 p.m.

The Vice-President and General Manager of Lamar Advertising stated they have worked with City staff and are in agreement with this amendment.

Chairman Sizemore closed the public hearing at 6:03 p.m.

Based on the above findings and the analysis provided in the staff report, Mr. Byers moved to recommend approval of the wording amendment. This motion was seconded by Mr. Cannady and carried unanimously by a 6-0 vote.

### **Other Business**

Chairman Sizemore announced the mid-month meeting for January will be held on January 22, 2009, at 4:00 p.m., in the William F. Wolcott Jr. Public Works Facility located at 161 South Charlotte Street, Asheville, North Carolina, in Room A-109, to review the draft Downtown Master Plan.

Regarding the City's Affordable Housing Trust Fund, Ms. Weeks said that said that all of the Commission members have been engaged in approving projects that include affordable



housing, sometimes 10%, 20% and sometimes 100% and they have been in agreement that those development projects add to a need in our community as well as providing an attractive addition to our tax base. With the City's budget situation this year, City Council will be looking for places to cut. She encouraged the Commission to help her support the City Council in continuing to fund and support the Housing Trust Fund in this year's budget. She explained that this is a loan program and all the funds are repaid, whether they are used as construction loans or permanent loans. The homes that are constructed pay full property taxes and become a permanent part of our tax base. The tax value of development projects that have already been funded is over \$50 Million. These development projects also are an economic development boost to the City as they provide jobs and also the dollars spent are multiplied over and over again in our local economy. The people that are helped are mainly people who are working families, the elderly and those that are disabled. She said these loans are only portion of the either the construction cost or the permanent financing and therefore we are leveraging private dollars, usually at least 5 to 1 and in many cases 10 to 1 for the dollars that we spend.

Ms. Weeks said that during the Commission's pre-meeting, City Attorney Oast suggested the Commission discuss this and have if there is consensus, that the Commission adopt a formal resolution at their next meeting. However, because City Council will be holding their retreat this weekend to consider the budget, she asked for the Commission's support of the following statement and that the statement be presented to Council at their retreat: "Please keep safe, attractive, energy efficient homes among your highest priorities by continuing your support of the Asheville Housing Trust Fund."

If there is consensus amongst the Commission members, Chairman Sizemore said that a motion could be made to adopt the statement presented by Ms. Weeks to be presented to Council at their weekend retreat and then a formal resolution could be adopted by the Commission at their mid-month meeting on January 22.

Mr. Mike Butrum, representative of the Asheville Board of Realtors and Asheville Home Builders, spoke in support of the Housing Trust Fund and supported City Council's continuance of their funding.

There was a brief discussion on the annual allocation to the Housing Trust Fund.

Mr. Cannady moved to adopt the following statement and that it be sent to City Council for their weekend retreat: "Please keep safe, attractive, energy efficient homes among your highest priorities by continuing your support of the Asheville Housing Trust Fund." This motion was seconded by Chairman Sizemore and carried unanimously on a 6-0 vote. Chairman Sizemore noted that Mr. Jones was supportive of this statement as well.

It was the consensus of the Commission that a formal resolution be considered, at the January 22 mid-month meeting, regarding their support of the Housing Trust Fund.

### **Adjournment**

At 6:16 p.m., Mr. Hart moved to adjourn the meeting. This motion was seconded by Mr. Cannady and carried unanimously by a 7-0 vote.